

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 15TH MARCH 2006 / 24TH PHALGUNA, 1927

LA.App..No. 1426 of 2003()

LAR.251/1998 of SUB COURT, PAYYANNUR
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APPELLANT: PETITIONER:

C.M.K.ABDULLA, S/O. ABDULRAHIMAN,
RAMANTHALI AMSOM DESOM, P.O. RAMANTHALI,
KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS: RESPONDENT:

THE SPECIAL TAHSILDAR,
LAND ACQUISITION, KANNUR.

BY GOVERNMENT PLEADER SHRI.ALOSCIOUS THOMAS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 15/03/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.HEMA, J.

L.A.A.No.1426 of 2003

Dated this the 15th day of March, 2006

JUDGMENT

This appeal arises from the judgment of the Subordinate Judge's Court, Payyannur in L.A.R.No.251 of 1998. As per the impugned judgment, the claim made by the appellant was dismissed. According to the appellant, an extent of 0.0780 hectares of land in RS.No.394/1 of Ramanthali Village had been acquired for establishment of Naval Academy, vide award No.7/III/84 dated 10.2.1984. Land value was fixed at Rs.64,700/- per hectare and the amount due to the appellant as compensation was paid also. Subsequently, a petition was filed by the appellant under Section 28A of the Land Acquisition Act ('the Act', for short) for redetermination of the compensation, on the basis of the award in L.A.R.No.200/1987 dated 31.8.1989. The application was rejected by the Land Acquisition Officer.

2. The appellant, therefore, made an application for reference of the case under Section 28A(3) of the Act and accordingly reference was made and numbered as L.A.R.No.251/98. Evidence

was adduced on both sides. On the side of the appellant AW1 was examined and marked Exhibit A1. On the side of the respondent, Exhibits B1 to B4 were marked. The court below found that the appellant did not establish that the points raised by the appellant to get enhanced compensation were not established. Those are with respect to the road frontage to the property and also the suitability of the property for cultivation.

3. It was also found by the court below that there was no convincing or satisfactory evidence with respect to the fact whether Exhibit A1 relates to the property which is acquired.

4. Learned counsel for the appellant vehemently contended that Exhibit A1 relates to the property acquired and the document itself shows that the property has road frontage as seen from the schedule and therefore the finding that the appellant has not established his case, is totally baseless. In support of this contention, he made reference to the award passed in this case by the Land Acquisition Officer, which refers to the document number of the property acquired in this case. It was submitted that the said number tallies with the number stated in Exhibit A1 and therefore, it has to be found that Exhibit A1 is a document relating to the

property acquired. It was also submitted that the party's name which is shown in Exhibit A1 and the award also tally. Therefore, the court ought to have found that the property has road frontage, on the basis of Exhibit A1, is the argument.

5. The question is whether the appellant established that the property acquired from him is having a road frontage and in view of this, whether he is entitled for enhanced compensation or not. The respondent disputed the existence of road frontage as seen from the trend of the cross-examination. Except Exhibit A1, nothing is brought out in evidence to establish that the property is having road frontage. At the time of evidence, when questions were put to AW1 on the relevant aspects in cross examination, he remained silent. It can, therefore, be reasonably inferred that Exhibit A1 does not relate to the property acquired in this case. It was admitted that the survey number shown in Exhibit A1 and the survey number of the property acquired are different. AW1 also admitted that the extent of the property also differ. When a question was put that Exhibit A1 does not relate to the property acquired, he remained silent. He also said that he had not mentioned to the Land Acquisition Officer anything with respect to Exhibit A1.

6. Still, even if Exhibit A1 is taken to be the document which relates to the property acquired as contended by learned counsel for the appellant even then a mere marking of Exhibit A1 may not be sufficient to hold that the property is having road frontage. This was a fact in dispute. AW1 was cross-examined on this aspect and he was asked whether he had shown the road to the Commissioner and his attention was also drawn to the omission in the Commission report regarding the road frontage. He also stated that he had no objection to the commission report. From the evidence adduced by AW1, it is not possible to infer that Exhibit A1 is having road frontage.

7. AW1 admitted the facts stated in commission report that the property is rocky in nature and that is why he did not give any objection to this. A reading of the commission report, Exhibit C1, will not reveal that the property is suitable for cultivation. There is nothing in the evidence of AW1 to show that the property is suitable for cultivation. This was a fact which could have been brought out in evidence and sought to be reported by the Commissioner. Even if there is an omission in the report about road frontage as well as the suitability of cultivation, objection ought to have been filed to

the commission report. This was not done. In the above circumstances, I do not find any reason to interfere with the finding of the court below that the appellant failed to establish the vital factors to get additional compensation.

8. Another most important aspect is pointed out by the learned Government Pleader. The appellant filed an application under Section 28(A) of the Act stating that an award was passed in L.A.R.NO.200 of 1987. A reading of Section 28(A) of the Act shows that when an award is passed by the court allowing to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4(1) of the Act and who are aggrieved by the award of the Collector notwithstanding that they had not made an application to the Collector under Section 18 of the Act may apply in writing to the Collector requiring him to determine the amount of compensation payable to them on the basis of the amount of compensation awarded by the court.

9. Therefore, the basis for a re-determination is the basis of the amount of compensation awarded by the court as per earlier

award with respect to the property covered by the same notification provided such compensation awarded by the court is in excess of the compensation awarded under Section 11 of the Act. So, the award passed by the court and the amount of compensation awarded by the court are most relevant to re-determine the compensation under Section 28(A) of the Act. The case of the appellant is that the claim under Section 28(A) is based on the award passed in LAR.200/1987. But the appellant came forward with the award in another case at the time of evidence. He did not place reliance upon the award in L.A.R.No.200 of 1987 or the amount of compensation awarded as per the said judgment. He, as AW1 deposed that he produced a judgment in L.A.R.No.186 of 1987 and it appears that he is basing his claim on the award passed in the said case. At the time of evidence, AW1 did not make any claim on the basis of the award in L.A.R.No.200 of 1987. The court below has rightly rejected the claim for want of evidence and the above discrepancy already discussed. The appeal is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

L.A.A.NO.1426 OF 2003

JUDGMENT

15.3.2006